

BRB No. 00-0777

NORMAN E. RUPP	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DEPARTMENT OF THE ARMY/NAF	)	DATE ISSUED:
	)	
and	)	
	)	
ALEXIS, INCORPORATED	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of Larry W. Price, Administrative Law Judge, United States Department of Labor.

John E. Houser, Thomasville, Georgia, for John W. Merting, claimant's counsel.

Christopher P. Boyd and Lana G. Eicher (Taylor, Day & Currie), Jacksonville, Florida, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney's Fees (97-LHC-1820, 1821) of Administrative Law Judge Larry W. Price rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. See, e.g., *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On June 9, 1994, claimant sustained a back injury and on July 10, 1994, claimant sustained a deep cut on his left wrist during the course of his employment. In his Decision and Order-Awarding Benefits, the administrative law judge found claimant entitled to compensation for temporary total disability, 33 U.S.C. §908(b), from July 11, 1994, until August 19, 1995, based upon an average weekly wage of \$254.58, and, thereafter, continuing compensation for permanent total disability, 33 U.S.C. §908(a). Employer was found entitled to relief from continuing compensation liability pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f). Claimant was awarded medical benefits for his back condition until the date of maximum medical improvement on January 2, 1995, when the administrative law judge found that claimant's work-related back injury had resolved, and claimant was found entitled to continuing medical benefits for his left wrist condition. Subsequently, claimant's counsel submitted a petition requesting a fee of \$63,830, representing 196.4 hours at \$325 per hour, plus costs of \$2,745.87. Employer filed objections to the fee petition. In his Supplemental Decision and Order Awarding Attorney's Fees, the administrative law judge awarded claimant's counsel an attorney's fee of \$23,642.50, representing 135.1 hours at \$175 per hour, plus costs of \$2,721.87.

On appeal, claimant challenges the reduction in the hourly rate sought and contends that an hourly rate of \$325 is appropriate. Employer responds, urging affirmance.

Claimant asserts that the administrative law judge erred in reducing the hourly rate sought by claimant's counsel to \$175 as the awarded rate is inconsistent with counsel's usual hourly rate of \$200 for non-contingency work, counsel's competence, and the excellent results obtained for claimant. The administrative law judge addressed employer's objection to the \$325 hourly rate requested, and he found the rate excessive, as the issues resolved were not complex. On this basis, the administrative law judge found a rate of \$175 fair and reasonable. Section 702.132, 20 C.F.R. §702.132, provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *see also Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). We affirm the hourly rate of \$175 awarded as the administrative law judge considered claimant's degree of success, the necessity of the work performed, and the complexity of the issues involved. Claimant has not shown that the administrative law judge abused his discretion in reducing the hourly rate based on the relatively routine nature of the issues in this case.<sup>1</sup> *See Ferguson v. Southern States Cooperative*, 27 BRBS 16

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<sup>1</sup>Contrary to claimant's contention, the fact that his attorney is not very familiar with proceedings under the Longshore Act does not aid his claim for a high hourly rate and a large number of hours.

(1993); *see also* *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998); *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *see generally* *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge